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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,370	09/25/2003	Mark E. Palm	P06144US00	1859

27139 7590 03/21/2007  
MCKEE, VOORHEES & SEASE, P.L.C.  
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DES MOINES, IA 50309-2721

EXAMINER
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PERRIN, JOSEPH L

ART UNIT	PAPER NUMBER
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1746

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/671,370

Applicant(s)

PALM ET AL.

Examiner

Joseph L. Perrin, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2006.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 20 December 2006 have been fully considered but they are not persuasive.
2. Applicant points to the cited caselaw and essentially argues that the caselaw is not relevant in an attempt to refute the duplication of parts and rearrangement of parts positions of the Examiner and that the suggested modification of DE'214 is "either nonfunctional, or does not meet the limitations of claim 1 and 4. The Examiner finds these arguments non-persuasive and lacking convincing showing or evidence on how the claimed invention is non-obvious and patentably distinguishes over the prior art of record.
3. In response to applicant's argument regarding "design choice" and requirement for "some reason why a person skilled in the art would find it obvious to depart from the teachings of the prior art", the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, DE'214 teaches each and every limitation but for the nozzle and disk being "spaced apart" and using a second disk and nozzle. Regarding the broad recitation "spaced

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apart", the Examiner notes that pipe (8) of DE'214 appears to be stationary while disk (10) appears to be rotatably mounted thereon. Thus, given the broadest reasonable interpretation the pipe (with nozzles 19) could arguably be construed as readable on being "spaced apart" from the disk. A simple modification of spacing apart the pipe/nozzles and disk further to increase the free range of movement and rotatability of the disk (a required function of both the claimed disk and the prior art disk) would have clearly been within the knowledge generally available to one of ordinary skill in the art. The Examiner notes that applicant has provided no showing or evidence of unexpected results for the "spaced apart" limitation, however, there does not appear to be anything unexpected from spacing apart a stationary nozzle and a rotary disk to impart any additional benefit from the rotation of the disk by the spray of the nozzle and it would appear to be a simple modification/rearrangement well within the knowledge generally available to one having ordinary skill in the art.

4. Regarding applicant's argument that in DE'214 the water directed from the nozzle "cannot hit the internal vanes 18 due to the protection of the conical roof of the disk 10", this is not persuasive because Figures 1-2 clearly show nozzles (19) directing water in a horizontal direction and the water being applied to vanes (18) to provide rotary motion of the disk (10). Whether or not the disk is conical and assists in directing fluid to the vanes (18) and downwardly to the dishes to be washed do not refute the fact that the dishwasher of DE'214 clearly read on the claimed structural limitations. See, for instance, the left portion of vane (18) in Figure 3 which is clearly shown to be within the horizontal path of the nozzles.

5. Regarding the duplication of parts, the Examiner maintains the rejection since the use of plural nozzles in the dishwashing art is common knowledge and well within the knowledge generally available to one having ordinary skill in the art. The Examiner notes that applicant has provided no showing or evidence of unexpected results for the second set of disk/nozzle limitation, however, there does not appear to be anything unexpected in providing additional nozzles in a dishwasher, for instance, for the well understood principal of providing more spraying nozzles to enhance spray coverage and thus cleaning, and it would appear to be a simple modification/rearrangement well within the knowledge generally available to one having ordinary skill in the art.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE'214 in combination with EP 593876 (EP'876).

DE'214 discloses a dishwasher comprising a washing chamber (1) having side, bottom, top and back walls (see Fig. 1), and door (2), a disk (10) mounted on the top wall for rotation about a vertical axis and having a plurality of vanes (18), a water nozzle (8, 19) on the top wall to direct a water jet horizontally onto the vanes of the disk to rotate the disk and redirect the water radially for distribution in the washing chamber as claimed. See Figs. 1 and 2, and col. 2, line 50 - col. 3, line 5. The reference also discloses the dishwasher with the distribution system as claimed.

DE'214 as discussed supra discloses all limitation with the exception of the water nozzle in the dishwasher spaced from the disk, using a second disk and a second water nozzle as claimed.

EP'876 discloses a first and second water spraying means (36, 45, (fig. 2)) on the top wall of the washing chamber of a dishwasher.

It would have been obvious for one skilled in the art to use a second water nozzle taught by EP'876 and a second disk with vanes mounted in the top wall for rotation in the DE'214 or EP'720 dishwasher to obtain the claimed dishwasher. This is because it is obvious to use duplication of nozzle and disk in the DE'214 dishwasher, because mere duplication of parts has no patentable significance unless a new and unexpected result is produced. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).


It would have been obvious for one skilled in the art to re-arrange the position of the disk and nozzle to be spaced apart to improve the water distribution system. This is also because making the disk and nozzle being spaced apart held to be an obvious matter of design choice. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device.); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice).

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.
11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Joseph L. Perrin, Ph.D.  
Primary Examiner  
Art Unit 1746

JLP